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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

LOCKE'S QUARRY, INC.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 84-26-M  
A.C. No. 09-00727-05501

Locke's Quarry, Inc.

SUMMARY DECISION

Before: Judge Koutras

Statement of the Case

This case concerns a civil penalty proposal initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for two alleged violations of mandatory safety standard 30 C.F.R. 56.12-13(b). The proposals seek a penalty assessment of \$98 for section 104(a) Citation No. 2243929, issued by an MSHA inspector on October 25, 1983, and a \$20 penalty for Citation No. 2243931, issued that same day. The inspector found that the first violation was "significant and substantial," and that the second one was not.

Respondent, by and through its counsel, filed an answer to the petitioner's civil penalty proposals, and while it did not dispute the fact that the violations in question occurred, it did take issue with the inspector's "significant and substantial" finding concerning Citation No. 2243929. However, respondent's counsel stated that respondent did not desire a hearing, and he explained that the respondent simply wanted to make it known that the proposed civil penalties in the amount of \$118 are disproportionate for the violations in question.

In view of the respondent's answer, and in particular the fact that it did not contest the fact of violations and indicated that it did not desire a hearing, I issued an Order

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on September 18, 1984, directing the parties to show cause as to why this case should not be disposed of by summary decision. I also afforded the parties an opportunity to file further written arguments with me in support of their respective positions.

By motion filed October 22, 1984, counsel for the petitioner filed a motion for summary decision, with supporting arguments and information concerning the six statutory criteria found in section 110(i) of the Act. Respondent has not responded to my order, nor has it filed any response or opposition to the motion filed by the petitioner. Under the circumstances, I conclude and find that the respondent has waived its right to file further arguments with me, and I will summarily decide this case on the basis of the pleadings of record, including the petitioner's motion for summary decision, with supporting arguments.

#### Findings and Conclusions

I take note of the fact that the respondent does not dispute the fact that on October 25, 1983, it was served with Citations 2243929 and 2243931 for violations of mandatory safety standard 30 C.F.R. 56.12-13(b), which provides as follows:

56.12-13 Mandatory. Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be: (2) Mechanically strong with electrical conductivity as near as possible to that of the original; (b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture; and (c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

Section 104(a), "S & S" Citation No. 2243929, describes the cited condition or practice as follows:

There was a defective splice in the 110 volt power cable for the quarry flood light. The splice was not insulated to a degree at least equal to that of the original and sealed to exclude moisture. The defective splice was located in an area where quarry personnel have to be regularly.

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Section 104(a), non-"S & S" Citation No. 2243931, describes the cited condition or practice as follows:

There were several defective splices in the 110 volt power extension cable at the compressor building. The splices were not insulated to a degree at least equal to that of the original and sealed to exclude moisture.

#### Fact of Violations

Included as part of the arguments in support of its case, the petitioner has filed a sworn affidavit executed by the inspector who issued the citations in question in this case. After careful review of this affidavit, including a full explanation by the inspector, I conclude and find that the petitioner has established the fact of violation as to both citations, and they are AFFIRMED.

In support of its "single penalty assessment" of \$20 for Citation No. 20243931, the petitioner points out that while the 110 volt extension cable at the compressor building had several defective splices, it was in an area not readily accessible to employees, and there was only one employee who had the responsibility for turning the compressor on in the morning and off in the evening. Also, while there was loose tape wrapped around the bare wires, petitioner concludes that there was no evidence that this violation was reasonably likely to result in a serious injury and it was abated immediately upon notification.

After consideration of the arguments presented by the petitioner, I adopt its proposed findings and conclusions with respect to this citation as my findings and conclusions, and they are affirmed.

In support of the inspector's "significant and substantial" finding with respect to Citation No. 2243929, the petitioner asserts that Inspector Grabner observed that there were four employees exposed to the 110 volt energized wires located on top a handrailing used by employees to travel to and from the quarry. Petitioner argues that this exposure to the energized wires was regular and reoccurring, and that if the exposed wires were contacted by the employees, serious injury or death could have resulted from the 110 volts. In support of this conclusion, the petitioner relies on Inspector Grabner's affidavit, and an attachment to that affidavit which is identified as an excerpt from Bureau of Mines "Monthly Safety Topic" discussion concerning low voltage electrical hazards.

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After careful consideration of the record in support of the inspector's "significant and substantial" finding concerning Citation No. 2243929, and absent any input by the respondent, I conclude and find that the petitioner has established that there was a reasonable likelihood of an injury, and the inspector's finding in this regard IS AFFIRMED.

#### History of Prior Citations

Exhibit 3 submitted by the petitioner is a computer print-out reflecting the respondent's history of prior citation assessments for the period December 6, 1981, through December 5, 1983. The only citations listed are the ones which are contested in this case. Accordingly, for purposes of any civil penalty assessments made by me in this case, I have considered the fact that the respondent has no prior history of violations.

#### Size of Business and Effect of Civil Penalties on the Respondent's Ability to Continue in Business

The information submitted by the petitioner reflects that the respondent is a small mine operator, employing four employees who work less than 10,000 manhours a year. I therefore conclude that the respondent is a small operator, and in light of any information to the contrary, I further conclude that the civil penalties which I have imposed here will not adversely affect the respondent's ability to continue in business.

#### Good Faith Abatement

With regard to Citation No. 2243929, the record establishes that abatement was achieved within 15 minutes of the issuance of the citation, and that the defective power cable was removed from service. As for Citation No. 2243931, the record indicates that abatement was achieved the same day the citation issued, and that the respondent repaired the cited defective cable splices. Further, the petitioner concedes that the respondent immediately replaced or repaired the cited cables on notification by the inspector. Accordingly, I conclude that the respondent gave immediate attention to the citations by rapidly correcting and abating the violations, and I have considered this in the civil penalties which have been assessed for the citations in question.

#### Negligence

I conclude and find that the record here establishes that both of the citations in issue resulted from the

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respondent's failure to exercise reasonable care, and that the violations are the result of ordinary negligence on the respondent's part.

#### Gravity

I conclude and find that the record here supports a finding that Citation No. 20243931 was nonserious, and that Citation No. 2243929, was serious. In the first instance, the inspector concluded that any exposure to a hazard was of very short duration, and that there was an attempt made to cover any exposed wires. As for the second citation, I agree with the inspector's evaluation that the hazard presented constituted a likelihood of injury to several employees.

#### Civil Penalty Assessment

I take note of the fact that during the initial civil penalty assessment procedure made by MSHA's Office of Assessments for Citation No. 2243929, the initial assessment was in the amount of \$140, as computed by MSHA's penalty "point system." A further reduction after application of MSHA's penalty criteria, resulted in a reduction of the penalty to \$98, and this is the assessment amount that the petitioner proposes in this case. Absent any further input by the respondent, I cannot conclude that this proposed civil penalty assessment is unreasonable. Accordingly, the petitioner's proposal is accepted, and I adopt it as my civil penalty assessment for this violation.

With regard to Citation No. 2243931, petitioner's "single penalty" assessment of \$20 seems reasonable in the circumstances, and I accept and adopt it as my civil penalty assessment for this citation.

#### ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$98 for Citation No. 2243929, and a civil penalty in the amount of \$20 for Citation No. 2243931. Payment is to be made to MSHA within thirty (30) days of the date of this decision, and upon receipt of payment, this case is dismissed.

George A. Koutras  
Administrative Law Judge